

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

.....
Rui Rodrigues

v.

Providence School Department
.....

DECISION

Held: On a de novo basis it is determined that good and just cause exists for the dismissal of Dr. Rodrigues from his position with the Providence School Department. It is further determined that good cause exists for annulling all Rhode Island teaching certificates belonging to Dr. Rodrigues. Dr. Rodrigues is therefore dismissed from his position with the Providence School Department and his Rhode Island teaching certificate is hereby revoked and annulled.

DATE: April 5, 2012

Travel of the Case and Jurisdiction

After a hearing the Providence School Board found good cause to dismiss the petitioner—Rui Rodrigues, PhD – from his position as a school psychologist in the public schools of Providence. From this decision of the Providence School Board the petitioner filed the present appeal with the Commissioner of Education for a *de novo* hearing as permitted by law. R.I.G.L. 16-13-4(a) See *Pawtucket School Committee v. Board of Regents for Education*, 513 A.2d 13, at 15 (R.I. 1986). The Rhode Island Department of Education (RIDE) then intervened in this matter as permitted by regulation to contend that the petitioner’s teaching certificate should be revoked based upon several of the dismissal counts that the Providence School Board relied upon in dismissing the petitioner from his employment. Jurisdiction is present under R.I.G.L. 16-39-1, R.I.G.L. 16-39-2, R.I.G.L. 16-13-5 and R.I.G.L. 16-11-4.

This matter was initially heard by another hearing officer who recused herself for good cause. In an interlocutory decision the present hearing officer ruled that it was proper for him to hear this matter on the basis of transcripts compiled from proceedings before the other hearing officer. This prior interlocutory decision is hereby adopted and annexed as a final decision on the issues relating to the use of transcripts in this hearing.

Positions of the Parties

The Providence School Board and the Rhode Island Department of Education

The Providence School Board contends that “good and just cause” exists under R.I.G.L. 16-13-3(a) for the dismissal of Petitioner Rodrigues on the basis of the following allegations contained in the letter (Providence School Board Ex. 1) that the Providence School Board used to initiate dismissal of the petitioner. In pertinent part Providence School Board Exhibit 1 alleges that the dismissal of the petitioner is justified by:

1. A pattern of unlawful sexual misconduct, specifically, indecent exposure. This conduct demonstrates poor judgment and inability to respect appropriate interpersonal boundaries, particularly with young females, and therefore compromises your ability to perform your job duties effectively, particularly when interacting with students and parents;
2. Excessive absences during the 2004-05 academic year, including uses of so-called “bereavement leave”;
3. Dishonesty in use of “sick leave” and professional development leave during the 2005-06 academic year;
4. Larceny of School property in mid-November 2005; and
5. Insubordination in that you 1) failed to provide your supervisor with a schedule as required in or about September 2005; and 2) refused to meet with your supervisor to discuss this scheduling matter in October 2005.

The Rhode Island Department of Education, through its Office of Educator Quality and Certification, intervened in the present appeal contending that each of the following grounds, which mirror count 1 of the dismissal letter issued by the Providence School Board, support the revocation and annulment of the teaching certificate possessed by Mr. Rodrigues:

1. You exposed your genitals to Valerie Senft and stroked your penis while in her view at Second Beach in Middletown, Rhode Island on or about November 4, 2005.
2. You exposed your genitals to Susan Walker Iverson and stroked your penis while in her view at the Salve Regina University library in Newport, Rhode Island on or about September 12, 1994.
3. You exposed your genitals to Karen Nassef and stroked your penis while in her view at Atlantic Beach in Middletown, Rhode Island in August 1992.

The notice of the Rhode Island Department of Education (RIDE Ex.1) initiating its action to intervene in this matter for the purpose of seeking the revocation and annulment of the petitioner's teaching certificates states:

"The conduct described above demonstrates that you are not professionally fit to hold a Rhode Island educator's certificate. It also demonstrates that you have failed to comply with the requirement of Rhode Island General Law 16-12-3 that teachers implant and cultivate principles of virtue and morality in the minds of students."

Position of the Petitioner

The petitioner contends that the record does not support his dismissal and that in any event his participation in therapy has remediated any behavioral problems he may have had.

Standard of Review

This matter is before the Commissioner for a *de novo* hearing. See *supra.*, *Pawtucket School Committee*, at 15. The Providence School Board has the burden of proving by a preponderance of the evidence that there is good and just cause for the dismissal of Dr. Rodrigues. R.I.G.L. 16-13-3 (a). The Rhode Island Department of Education has the burden of demonstrating by a preponderance of the evidence that good cause exists for the annulment of Dr. Rodrigues' teaching certificate. R.I.G.L.16-11-4.

Findings of Fact

1. Counsel for Dr. Rodrigues stipulated to the accuracy of Ms. Senft's testimony at the hearing before the Commissioner of Education.¹ (Tr. 12/6/ 06 at 148, 149) Counsel further stipulated to the factual bases of the two other instances of similar conduct which occurred in 1992 and in 1994. See: "Stipulation" Joint Exhibit 1. We therefore find that Dr. Rodrigues committed the three separate acts of misconduct reported by Valerie Senft, Susan Walker Iverson, and

¹ The testimony of Valerie Senft is contained in the transcript dated December 6, 2006 and begins at page 83.

Karen Nassef. We separately note that we fully credit the testimony of Valerie Senft contained in pages 83 through 132 of the transcript of December 6, 2006.

2. We find that there is a lack of evidence to support a finding that Dr. Rodrigues was excessively absent during the 2004-05 academic year.
3. Dr. Rodrigues testified that he did not report to work on November 4, 2005 (the same day Valerie Senft reported that Dr. Rodrigues exposed himself to her in Newport) because the PSD had granted his request to attend a professional development program in Boston offered through Harvard Medical School and the Cambridge Health Alliance. The Providence School Department, however, presented compelling evidence demonstrating that it was very unlikely that Dr. Rodrigues attended this professional development program.

Providence School Board Exhibit 14 was an application for registration for a seminar entitled Autism Spectrum Disorders to be held in Boston on November 4 and 5, 2005.² Dr. Judy Reiner Platt, who is the director of continuing medical education in psychiatry at Cambridge Health Alliance and Harvard Medical School, testified in essence that a review of attendance records of this seminar failed to produce any evidence that Dr. Rodrigues had attended the seminar.³ Her testimony was seconded by the testimony of Donna Marie DeCelles who is the program administrative supervisor for the Department of Continuing Education at the Harvard Medical School.⁴ Ms. DeCelles testified that she had examined the file (Providence School Board Exhibit 18) for the Autism Spectrum Disorders seminar held on November 4 and 5, 2005. This file included a record of those who had registered for the seminar as well as a record of the payments made for attendance at the seminar. A sign-up sheet was included.⁵ There is no record in any of this material demonstrating that the petitioner attended the Autism Spectrum Disorders seminar held on November 4 and 5, 2005.

Dr. Rodrigues testified that he did attend this professional development program in Boston on November 4, 2005; however, his testimony was so vague, self-contradictory, and in contradiction of his prior testimony given in the initial proceeding before the first hearing officer that it lacked creditability. Rather than supporting Dr. Rodrigues's contention that he attended the program, it is more reasonable to conclude that he in fact did not attend the professional development program.⁶

Accordingly, a finding is hereby made that Dr. Rodrigues did not attend the professional development program now at issue and that the representations he made to the Providence School Board to the contrary were false and at variance with the facts of the matter.

4. We find insufficient evidence to support the allegation that Dr. Rodrigues stole school property in the form of testing equipment.

² Transcript page 487.

³ Testimony of Platt, Transcript of November 25, 2007, pages 478-622

⁴ Transcript, page 623

⁵ Transcript page 658.

⁶ Transcript of April 9, 2007, Testimony of Rui Rodrigues, pages 227- 353.

5. We find, based upon the testimony of Helen Giorgio that Dr. Rodrigues persistently failed to file an adequate work schedule with Providence school authorities. We find that Dr. Rodrigues was given numerous opportunities to remedy this deficiency but at no time did he make any effort to comply with the requirement of filing an adequate work schedule.

Conclusions of Law

- Teachers are expected to be role models and exemplars for their students. *Pawtucket School Committee* at 15. In matters relating to public employment, an employee's misconduct away from the work place may justify dismissal. *State Department of Children, Youth and their Families v. Rhode Island Council* 94, 713 A.2d 1250 (R.I. 1998); *Bunch v. Board of Review, Rhode Island Department of Employment and Training*, 690 A.2d 335, 338 (R.I. 1997). Public sexual misconduct provides good cause for dismissing a teacher. *Wishart v. McDonald*, 500 F.2d 1110 (1st Cir. 1974).
- A teacher's dishonesty with his public school employer provides good cause for dismissal. *Federal Way School District No. v. Vinson*, 225 P.3d 379 (Washington Ct. App. 2010)
- Insubordination provides good cause for dismissal. *James A. Rapp, Education Law*, Chapter 6, Section 6.12 [5] [a].

Discussion

The Rhode Island Department of Education submits in its brief that:

The record in this case indisputably established that on three separate occasions Dr. Rodrigues exposed his genitals and stroked his penis in public. On each occasion he did this in the view of a woman, one as young as 21. This behavior is aberrant and offensive. It is not the behavior of a role model, and it does not comport with the requirement of Rhode Island General Law 16-12-3 that teachers "aim to implant and cultivate in the minds of all children committed to his or her care the principles of morality and virtue." This behavior is particularly alarming when committed by a school psychologist, who works with troubled students and their families and in doing so must earn their trust and respect. Dr. Rodrigues' conduct is completely at odds with the roles and responsibilities of a school psychologist. It is unprofessional, antithetical to the duties of the position, and cause to revoke his certificate.

The findings of fact that we have made support the above stated submission of the Rhode Island Department of Education. We conclude that each of these three incidents, both separately and when taken together, constitute good and just cause for dismissing Dr. Rodrigues from his position with the Providence School Board and for annulling his Rhode Island teaching certificate. While we recognize that Dr. Rodrigues has sought treatment for this behavior, this effort at remediation does not negate the fact that these acts were committed. We find that the nature of the conduct at issue has

irreparably damaged Dr. Rodrigues' ability to function as a certified employee in a public school or as an exemplar for students.

We have also found that the Providence School Department has proved that Dr. Rodriguez was untruthful to his employer when he stated that he attended a continuing education program in Boston on November 4, 2005. Accordingly, it is determined that Dr. Rodrigues' lack of truthfulness with his employer concerning a matter of importance provides good and just cause for his dismissal.

Finally, we have found that Dr. Rodrigues, despite repeated requests from his employer, persistently failed to file an adequate work schedule with Providence school authorities. Such persistence in failing to submit a compliant work schedule to his employer constitutes insubordination and thus constitutes good and just cause for his dismissal.

We find insufficient evidence to support the allegations of the Providence School Board that Dr. Rodrigues stole school property, abused sick leave or that he was excessively absent during the 2004-2005 school year. We therefore give these allegations no weight in making our decision in the matter now before us.

Conclusion

On a de novo basis we find good and just cause to support the dismissal of Dr. Rodrigues from his position with the Providence school department. We further find that good cause exists for annulling Dr. Rodrigues' Rhode Island teaching certificate. Dr. Rodrigues is therefore dismissed from his position with the Providence School Department and his Rhode Island teaching certificates is hereby revoked and annulled.

Forrest L. Avila, Hearing Officer

Deborah A. Gist, Commissioner

April 5, 2012

Date